



Reasons for decision

Louise Gladu,

complainant,

and

Autobus Idéal Inc.,

respondent.

Board File: 29672-C

Neutral Citation: 2014 CIRB 718

March 17, 2014

The Canada Industrial Relations Board (the Board) was composed of Mr. Claude Roy, Vice-Chairperson, and Messrs. Daniel Charbonneau and Robert Monette, Members. The Board held a pre-hearing conference call on April 8, 2013, and a hearing in Montréal on May 9 and 10, 2013.

Appearances

Mr. Daniel Charest, for Ms. Louise Gladu;

Mr. Étienne Morin, for Autobus Idéal Inc.

These reasons for decision were written by Mr. Claude Roy, Vice-Chairperson.

I. Nature of the Complaint

This matter involves a complaint of unfair labour practice filed on October 23, 2012, pursuant to section 97(1) of the *Canada Labour Code (Part I-Industrial Relations)* (the *Code*) by

Ms. Louise Gladu (the complainant), who alleges violation of section 94(3)(a) of the *Code* in relation to a dismissal by Autobus Idéal Inc. (Idéal or the employer) for union activity.

II. Background

A. Certification and Complaint Background

[1] The employer is a company that engages in school bus transportation and bus transportation for extracurricular activities and charter trips. Its employees are represented by two bargaining units:

- a unit comprising employees assigned to school bus transportation for Peter-Hall School—that unit is represented by the Association des employés EBM (the Association);
- a unit comprising all employees of Idéal at its facility located at 7801 Marco-Polo Avenue, Montréal, “excluding those already represented by another certified association, as well as clerical staff and garage employees”—that unit is represented by the Syndicat des travailleuses et travailleurs des Autobus Idéal – CSN (the CSN or the union).

[2] The Association and the CSN were certified by the Commission des relations du travail du Québec (the CRT) on July 23, 2009, and May 11, 2011, respectively.

[3] On June 20, 2011, the complainant filed a complaint with the CRT pursuant to the Quebec *Labour Code* (the *Labour Code*). She alleged that she had been unlawfully dismissed, discriminated against or retaliated against, and subjected to other sanctions because she had exercised a right under the *Labour Code*.

[4] However, in dealing with an application for certification filed by the Association on December 28, 2011, pursuant to section 24.1 of the *Code*, the Board found that the employer’s activities were federally regulated. As a result, the Board issued certification order no. 10263-U in respect of the unit of employees assigned to school transportation for Peter-Hall School. Reasons for that decision were provided in *Autobus Idéal Inc.*, 2012 CIRB 642.

[5] Following that Board decision, the CSN filed an application, pursuant to section 44(3) of the *Code*, seeking recognition of the change in jurisdiction applicable to the bargaining unit it represents and a transfer of its provincial certification of May 11, 2011, to the federal level.

[6] On October 10, 2012, the Board recognized the transfer of jurisdiction to the federal level and issued order no. 10316-U to certify the CSN as the bargaining agent for the following bargaining unit:

all employees of Autobus Idéal Inc., **excluding** clerical and garage employees, and those already represented by another certified association, for its facility located at 7801 Marco-Polo Avenue, Montréal, Quebec.

[7] In the order, the Board declared that any proceeding before the Quebec CRT or an arbitrator who, under the laws of the province, was competent to decide the matter, continue as a proceeding under Part I of the *Code*, with such modifications as the circumstances required.

[8] Consequently, on October 23, 2012, counsel for the complainant asked the Board to open a complaint file pursuant to section 94(3) of the *Code*, in order that the complaint filed with the CRT on June 20, 2011, might continue before the Board as a proceeding under Part I of the *Code*.

B. The Complainant's Dismissal

[9] The complainant worked for Idéal as a bus driver from August 15, 2010, to June 15, 2011. At the time of her dismissal, she was assigned to drive school buses on a Commission scolaire de Montréal (CSDM) bus route (route no. 55). The parties admitted that, between December 7, 2010, and June 7, 2011, the complainant had issued 133 disciplinary notices to passengers on route no. 55, including 31 notices regarding missing bus passes.

[10] On June 7, 2011, the complainant refused to allow a pupil to board the school bus. The pupil in question and his brother returned home, but their parents were not there to receive them. A neighbour called the parents to let them know that their children were alone on the balcony of their home. These facts are set out in a document signed by the parties' respective counsel on May 9, 2013, to avoid having to have the young children involved testify.

[11] The complainant was immediately suspended.

[12] On June 8, 2011, Mr. Sylvain Senécal, supervisor of school transportation for the CSDM, sent a letter to Mr. Pierre Deschênes, president of Idéal, in which he described the incident of June 7, 2011, and asked that the complainant be permanently removed from all CSDM bus routes.

[13] Idéal's director of operations, Mr. Paul Breton, along with Mr. Deschênes and Ms. Julie Roy-Meilleur, Idéal's director of human resources, met with the complainant that same day and decided to maintain her suspension.

[14] On June 15, 2011, Mr. Breton and Ms. Nancy Trudeau, managing director and co-shareholder in Idéal, met with the complainant in order to dismiss her. The letter of dismissal, signed by Mr. Deschênes and Ms. Trudeau, reads as follows:

Subject: Termination of your employment relationship with Autobus Idéal Inc.

Ms. Louise Gladu:

This is further to our meeting with you on June 8, 2011, and our analysis of your file.

On June 7, 2011, you refused to allow a pupil ... to board the bus because he did not have his bus pass.

You knew the pupil quite well, as he had taken your bus many times since the start of the school year. Further, the pupil in question was accompanied by his older brother, whom you allowed to board.

... is in second grade in primary school. Your refusal to allow him to board meant that he had to return home, and his parents were not there to receive him. Luckily, his older brother accompanied him and a neighbour was available to help. Otherwise, the pupil would have been alone at home at that young age.

In addition, you did not try to contact the dispatch office to advise it of the situation, as was required, a fact to which you admitted during our meeting. You even stated that you had acted in this same manner on at least four occasions. Yet you knew or ought to have known that notifying the dispatch office was important in such cases.

You also admitted that you had received the code of ethics and that there was a copy of the code in your vehicle at the time of the incidents. As you are well aware, the ethics code contains the following provision:

[...]

XXVI. Ensure that pupils are transported in a safe and secure manner and that you do not cause any physical or mental harm to any passenger;

[...]

XXIX. Assume responsibility for the safety and security of passengers by properly and constantly monitoring them.

AUTOBUS IDÉAL ENSURES THAT DRIVERS DO NOT:

[...]

VI. Refuse to allow someone to board or put someone off the bus of their own accord.

Your action on June 7, 2011, was a serious offence, in violation of the code of ethics and your responsibilities as a bus driver for our company. It has caused an irreparable breakdown of the employer-employee trust relationship, warranting your immediate dismissal.

Your file has accordingly been closed and your name removed from our list of employees. We must count ourselves fortunate that nothing happened to [the pupil] that could have resulted in civil action against us and you. However, we cannot continue to employ you as we have lost our trust in you.

(translation)

[15] Given that under section 98(4) of the *Code*, the complaint alleging a violation of section 94(3)(a) of the *Code* is itself evidence that such violation actually occurred, the onus was on the employer to prove that the complaint was unfounded.

III. Evidence

A. The Employer's Evidence

[16] The employer called four witnesses: Mr. Senécal, Ms. Trudeau, Mr. Breton and Mr. Deschênes.

1. Mr. Sylvain Senécal, supervisor of school transportation for the CSDM

[17] Mr. Senécal explained that, on October 21, 2008, the CSDM had signed 23 school transportation contracts with Idéal, each for a specific route and the use of a school bus. He referred to specific clauses of the school transportation contract between the CSDM and Idéal for school years 2008–09 to 2011–12 (the transportation contract).

[18] Clause 19 of Section VII of the contract, respecting conduct, states the following:

19. THE TRANSPORTATION COMPANY and any drivers in its employ shall not of their own accord refuse to transport a person designated by THE COMMISSION, as THE COMMISSION retains sole authority for determining such cases. However, THE TRANSPORTATION COMPANY or drivers may refuse to transport someone for reasons of safety, after ensuring that the person is able to return to his or her point of origin or that a responsible person is able to take charge of the person. In such an event, THE TRANSPORTATION COMPANY shall immediately report the incident to THE COMMISSION.

(translation)

[19] Clause 21.1 of Section VIII of the contract, respecting complaints, reads as follows:

21.1 The COMMISSION may also require THE TRANSPORTATION COMPANY to remove a driver from all contact with pupils being transported if an internal investigation reveals that the driver is guilty of a serious offence that caused harm to a pupil or adversely affected the pupil's safety.

(translation)

[20] Appendix C of the contract contains the code of ethics for drivers, one paragraph of which states the following:

- Drivers shall not at any time suspend a child of their own accord. The right to suspend a pupil lies jointly with the school's administration, the transportation office and the transportation company.

(translation)

[21] In December 2010, the CSDM produced a document titled "Transportation company logbook – Instructions and guidelines" (translation) (the logbook), which it distributed to all the companies for each of their drivers. It was printed in pocket form, with a user-friendly format for ease of reference. The purpose of the logbook is to allow the CSDM to ensure that all carriers offer a standard service. The document is updated annually and was in effect at the time of the incident involving the complainant.

[22] The logbook states the following with respect to bus passes:

1) Bus passes

All pupils registered with the school transportation service are issued bus passes, which they must show each time they board the bus. The driver is required to check the bus passes to ensure that each child is boarding the correct bus.

If a child forgets his or her bus pass, the driver may allow the child to board, but must issue a disciplinary notice in respect of the child. In the event that several notices are issued, the COMMISSION will suspend the transportation service for the child.

(translation)

[23] The logbook states the following regarding the handling of disciplinary notices:

6) Disciplinary notices—Handling

We ask that you forward to us any disciplinary notices issued by your drivers within two days. This will allow us to promptly deal with problems on board the buses.

The bus driver must complete all disciplinary notices properly, sign them and have them signed by the school administration, and then provide the school administration with a copy.

(translation)

[24] On the morning of June 7, 2011, the principal of the school concerned telephoned Mr. Senécal to tell him that the complainant had left a child on the sidewalk. Mr. Senécal contacted Mr. Breton. When an offence is committed, an investigation is initiated and, since he had only one version of the facts, he asked Mr. Breton to obtain the complainant's account. Mr. Breton called him back and confirmed that he had obtained the complainant's account of the facts and that she had admitted that she had not transported the child. She had allegedly gone to the school to enquire as to whether the child was safe. The child in question was seven or eight years old and in second grade in primary school.

[25] Mr. Senécal indicated that a driver must never leave a child on the sidewalk, but rather must issue a disciplinary notice and follow established procedure for bus passes. He explained that children have a legitimate right to take their assigned school bus and that only the CSDM and the school have the authority to suspend a child's school transportation. On cross-examination, he indicated that, after three disciplinary notices, a child may be given a one-day transportation suspension.

[26] Mr. Senécal also indicated that leaving a child alone in the neighbourhood in question could have had catastrophic consequences. The CSDM ruled that the child's safety had been jeopardized. The child had been more than three kilometres from school. On cross-examination, he stated that route no. 55 is a route through a disadvantaged neighbourhood, but that it is no harder than any other route.

[27] For the reasons indicated, on June 8, 2011, Mr. Senécal sent the president of Idéal a letter demanding that the complainant be permanently removed from all CSDM routes.

[28] Mr. Senécal indicated that under the transportation contract, the CSDM would have been within its rights to issue a notice of penalty to Idéal, but since the employer had acted promptly to remove the complainant from all of its routes on June 8, 2011, it had decided against issuing such a notice.

[29] When cross-examined, Mr. Senécal indicated that, in December 2011, the CSDM had dealt with another matter involving one of the employer's drivers, who had allegedly dropped off a

four- or five-year old child at the wrong stop. The child's mother had been waiting at the next stop and had hurried to meet up with the child.

2. Ms. Nancy Trudeau, managing director of and co-shareholder in Idéal

[30] The employer called Ms. Trudeau from Idéal as a witness.

[31] Ms. Trudeau explained that, when hired on August 15, 2010, the complainant had been assigned to one of the employer's other clients, Peter-Hall School, to drive a paratransport minibus. The complainant had at that time been a member of the bargaining unit represented by the Association. In early December 2010, she had been assigned to CSDM route no. 55.

[32] Ms. Trudeau indicated that on April 17, 2011, the CSN had filed an application for certification with the CRT. Given that the employer had reached an understanding with the union on the bargaining unit, a certification order had been issued on May 11, 2011, as previously indicated. Negotiations with the union had begun in September 2011 and a collective agreement effective to June 20, 2016, had been signed in December 2012—without any pressure tactics.

[33] Ms. Trudeau also explained the bus pass system for the children as well as the disciplinary notice system. Bus passes issued by the CSDM enable the bus drivers to make sure that children are entitled to transportation and are boarding the right vehicle. Drivers must complete any disciplinary notices in triplicate and have them signed by the administration of the school the child attends. The school administration keeps one copy, the second copy is given to the employer's dispatch office, which forwards a copy to the CSDM by fax or email, and the third copy is kept by the driver.

[34] She confirmed what Mr. Senécal had said, that, as indicated in the logbook produced by the CSDM, a driver does not have the authority to refuse to allow children to board the bus because of missing bus passes. She stated that the employer had given each of its drivers a copy of the logbook in December 2010, although she had not personally witnessed the complainant being given a copy.

[35] Ms. Trudeau indicated that the complainant had signed an acknowledgement of receipt of Idéal's code of ethics for drivers on August 24, 2010, when she had started driving the Peter-Hall

School route and another acknowledgement of receipt of the same document on December 3, 2010, when she had been assigned to CSDM route no. 55.

[36] The code of ethics for drivers reads in part as follows:

THE DRIVER SHALL:

...

XX. Check each child's bus pass every day. Please advise the office if a child does not have his or her bus pass;

...

AUTOBUS IDÉAL ENSURES THAT DRIVERS DO NOT:

...

VI. Refuse to allow someone to board or put someone off the bus of their own accord.

(translation)

[37] Ms. Trudeau explained the process that the employer had followed prior to dismissing the complainant. She was questioned about the summary of the complainant's file in regard to the process that had led to her dismissal. The document in question contains, among other things, the full summary of the meeting of June 8, 2011, with the complainant, Mr. Deschênes, Mr. Breton and Ms. Roy-Meilleur, prepared by the director of human resources. Counsel for the complainant objected to Ms. Trudeau testifying about the meeting since she had not attended it. The Board decided to sustain the objection, given that Ms. Trudeau had not attended the meeting and had not prepared the summary in question. She accordingly could not be questioned regarding that part of the document.

[38] However, Ms. Trudeau had drafted the summary of the meeting of June 15, 2011, as she had attended that meeting with the complainant and Mr. Breton, and she had been the one to dismiss the complainant. She accordingly was able to testify concerning that part of the document.

[39] Ms. Trudeau explained that the decision to dismiss the complainant had been made with the management team, but that she and Mr. Deschênes had made the final decision. Ms. Trudeau acknowledged that this had been the first disciplinary action taken against the complainant for such an offence.

[40] According to Ms. Trudeau, there had been no alternative to dismissal, as the complainant had committed a serious offence: she had placed a young child in danger, had damaged the employer's reputation in the eyes of the school and the CSDM, and had lost the employer's trust. This was the first time that she had had to take action in regard to such an offence. On cross-examination, Ms. Trudeau admitted that the employer had not offered the complainant any other position, explaining that the complainant's conduct had damaged the company's integrity in the eyes of parents, the school and the CSDM. Ms. Trudeau explained that she had lost trust in the complainant and that, given similar circumstances, she would do the same thing in respect of any employee.

[41] Ms. Trudeau indicated that she had been completely unaware that the complainant had been involved in the unionization activity.

[42] Counsel for the complainant entered into evidence a list of sanctions for offences on the job (list of sanctions), which he submitted provides for a one-day suspension for the type of offence involved in this complaint. Ms. Trudeau explained that the list in question had never been implemented and that, besides, it did not deal with the complainant's situation.

[43] The list of sanctions is a list prepared by Ms. Trudeau and Ms. Roy-Meilleur for submission to the employee committee, on which the complainant sat. The committee existed before the CSN's certification. The minutes of the different committee meetings indicate that the list still needed some work. At the committee meeting of December 8, 2010, the list of sanctions was distributed to the members, who were asked to circulate it among the other drivers, for feedback by January 15, 2011. However, at the last meeting of the committee, on May 30, 2011, it was decided to dissolve the committee in view of the application for certification. Ms. Trudeau indicated that the complainant had attended all of the committee's meetings.

[44] On cross-examination, Ms. Trudeau explained that she had never made use of the list of sanctions, but had always used the company's code of ethics.

[45] When cross-examined concerning another incident involving one of the employer's drivers, the witness explained that the school bus driver in that instance had made an honest mistake. She had dropped off a child at the wrong stop, but the mother, who had been waiting at the next stop,

had seen her child leave the bus and had immediately met up with him. She also stated that it was possible that the child had simply slipped out among other children. The driver had been driving for the company for 14 years and had had a clean track record.

[46] Another incident, where a request had been made by Hydro-Québec for a driver to be removed, had involved a passenger harassment complaint. The driver had taken time off because of illness and had received benefits from the Commission de la Santé et la Sécurité du travail. The employer had reassigned him to a route for Peter-Hall School on August 29, 2011, in connection with an incident that had taken place on August 9, 2011. Ms. Trudeau pointed out that the driver in question had held a union position.

3. Mr. Paul Breton, director of operations for Idéal

[47] The employer also called Mr. Breton as a witness. Mr. Breton had attended both the meeting of June 8, 2011, and the dismissal meeting of June 15, 2011.

[48] Mr. Breton explained how the complainant had obtained her position on CSDM route no. 55 and described the client's requirements respecting safety and security. He explained that drivers must allow children who do not have their bus passes to board their buses and must then complete a disciplinary notice in that regard. Only the CSDM has the authority to decide to refuse to allow a child to take the bus. Mr. Breton indicated that he had personally given the complainant a copy of the CSDM pocket logbook. On cross-examination, he stated that nobody had signed acknowledgements of receipt of the logbook.

[49] Mr. Breton had received a telephone call from Mr. Senécal in which the latter had reported the incident of June 7, 2011, and asked him to get the complainant's account of the facts. Mr. Breton had spoken with the complainant at the end of the day and summoned her to a meeting with management on June 8, 2011. Mr. Deschênes and Ms. Roy-Meilleur had attended the meeting with him. The complainant had not had union representation at the meeting.

[50] At the meeting of June 8, 2011, the complainant had explained why she had refused to allow the child to board the bus, and had indicated that she had relied on the list of sanctions submitted to the employee committee. She had also explained that, as soon as she had arrived at the school,

she had asked the administrative assistant to call the parents to make sure the child was safe. She had not called Mr. Breton to check whether she could refuse to allow the child to take the bus.

[51] Mr. Breton recognized the summary of the facts from the meeting, prepared by the director of human resources. It had been decided to suspend the complainant until management decided what to do.

[52] Mr. Breton also explained the circumstances surrounding the meeting with the complainant on June 15, 2011, during which she had been advised of her dismissal. He acknowledged the accuracy of the summary of facts for that meeting, prepared by Ms. Trudeau. The decision to dismiss the complainant had been made on the basis of the request of the client, the CSDM, in view of the very serious offence committed by the complainant and the short time she had been employed by the employer. Mr. Breton indicated that the employer had lost its trust in her.

[53] When cross-examined, Mr. Breton acknowledged that, in her time in the company's employ, the complainant had issued 133 disciplinary notices and that he had discussed them with her at least 20 times. However, he could not recall the complainant mentioning that she was having trouble with missing bus passes or her saying that she would no longer allow children without their bus passes to board the bus. He had first been informed of an incident involving the complainant refusing to allow a child to board the bus in June 2011. According to Mr. Breton, the rule at Idéal had always been the same: always allow the children to board the bus. Mr. Breton confirmed that this was the first disciplinary action that had been taken against the complainant.

4. Mr. Pierre Deschênes, president of Idéal

[54] The employer's last witness was the president of the company, Mr. Deschênes. The latter described Idéal's organization and the negotiation of the collective agreement effective to June 20, 2016, which had been signed in December 2012, without any pressure tactics. He spoke about the CSDM's very high standards with respect to safety and indicated that the CSDM was the only board that had a bus pass system. He also explained the procedure for disciplinary notices and the process followed by the decision makers in cases of children who did not have their passes. He confirmed that Mr. Breton had distributed the CSDM logbook to the drivers, but admitted that he himself had not witnessed this.

[55] Mr. Deschênes explained the entire process to which he had been a party, including the meeting of June 8, 2011, with the complainant, the facts of which were related by Mr. Breton. He also indicated that each driver had a mobile radio in order to be able to contact the dispatch office if necessary, but that the complainant had not used it before deciding to refuse to allow the child to board on June 7, 2011.

[56] Mr. Deschênes did not recall whether or not the complainant had been involved in the unionization activity, but indicated that the issue of unionization had never come up in the decision-making process. He had not attended the meeting of June 15, 2011, at which the complainant had been advised of her dismissal, but he had signed the dismissal letter after he and the management team had decided to dismiss her. He had not spoken with Mr. Sénécal of the CSDM after reading the letter of June 8, 2011.

[57] Mr. Deschênes had decided to dismiss the complainant because she had acted of her own accord in leaving a child on the sidewalk without a parent, an action that could have had serious consequences. He was of the view that she had committed a serious offence that had tainted the reputation of the school transportation system. According to the witness, he had worked in the school transportation system for 24 years and that had been the first time that he had seen a driver deliberately leave a child on the sidewalk. He had found the action appalling and had lost all trust in the complainant.

[58] Mr. Deschênes had approved Idéal's code of ethics, prepared by Ms. Trudeau and Ms. Roy-Meilleur, before it had been distributed to the employees. He confirmed that the list of sanctions to which the complainant referred had never been implemented.

[59] On cross-examination, Mr. Deschênes confirmed that he had attended the last employee committee meeting on May 30, 2011, and also confirmed the accuracy of the summary of that meeting, at which there had been discussion concerning the fate of the employee committee, given the advent of the union.

[60] Mr. Deschênes and Mr. Breton acknowledged summoning the employees covered by the new certification application filed with the CRT in April 2011 to a meeting held in a bus in early May 2011. Mr. Deschênes admitted to having expressed his disappointment to them about the

application for certification. He recognized that it had been inappropriate for him to do so, and stated, "I didn't understand, that's all" (translation). According to Mr. Deschênes, he had felt that he had his back to the wall; he had been facing the unknown. Now, he knows what's what. The employer has two certified unions and things are working well. Indeed, Mr. Deschênes actually finds the situation pleasant, whereas the employee committee was not very effective because of the employees' lack of interest and the division that existed between them.

[61] In closing, he confirmed that the complainant had been on the committee of employees assigned to Peter-Hall School before she had been assigned a CSDM route. To his knowledge, she had not held a union position at the time of her dismissal.

B. The Complainant's Evidence

1. Ms. Louise Gladu, complainant

[62] In her testimony, the complainant explained that, on March 28, 2011, she and seven or eight others had attended a meeting at which a CSN official had been present. Another meeting had been held on April 4, 2011, and had been attended by other drivers, and membership cards had been signed. She indicated that she had been involved in recruiting members and getting them to sign membership cards.

[63] She stated that, after the certification order had been issued on May 11, 2011, she had acted as a scrutineer for the election of the union executive.

[64] However, when cross-examined, the complainant admitted that she had not had anyone sign union membership cards and had not applied or been elected to sit on the union executive. She also confirmed that Ms. Trudeau had offered her bus route no. 55, but had not compelled her to take it.

[65] The complainant also explained how she had come to sit on the employee committee. An invitation to join the committee had been posted on the bulletin board. Since she had been driving a Peter-Hall School route in September 2010, she had been told by Ms. Trudeau that she would represent that section. A first meeting had been scheduled for September 7, 2010, but had later been postponed until September 16, 2010. The complainant indicated that, at that meeting, the employer had handed out a list of sanctions. She also pointed out that the summary of the

meeting of December 8, 2010, refers to that list, indicating that drivers were asked to validate it by January 15, 2011.

[66] The complainant indicated that, in May 2011, Mr. Breton had called drivers on their internal system to instruct them to return to the company offices for a meeting with Mr. Deschênes. They had gone to the parking area and, on attempting to enter the building, had been told that the meeting was being held in one of the buses. There had been between 12 and 15 drivers present. Mr. Deschênes had been the only one to speak. He had indicated that, in his mind, the certification was like being stabbed in the back. According to the complainant, he had added that there would be no more special privileges. He had shown the drivers a contract and said that he couldn't give anything more. The meeting had lasted between 20 and 25 minutes and everyone had left without anything else being said.

[67] The complainant indicated that Mr. Deschênes had met with the drivers again on May 30, 2011. There had been many more drivers than at the first meeting, in the bus. She had found that odd. Mr. Deschênes had been unhappy and had used an aggressive tone of voice. There had been an "airing of dirty laundry" (translation), as she put it, as some people had been for and others against a union. She had left before the end of the meeting, calling her spouse to come and pick her up. On leaving, she had told the union president that she would not be attending any future employee committee meetings. She had never been informed by the company that the employee committee had been dissolved, as she had been suspended on June 7, 2011.

[68] The complainant went on to explain her early days as a driver on route no. 55 and the difficulties she had encountered. On the first day, Mr. Breton had given her a route sheet with the stops she was to make and the list of pupils. That first day, she had realized that none of the children had bus passes. Some had not even known what she was talking about. She had asked the school whether the bus passes were mandatory. She added that the only instruction she had received from Mr. Breton in that regard had been to check the bus passes.

[69] The complainant stated that, on the first day, she had asked Mr. Breton whether he had something against her, to have given her that route. She said that he had answered, "We knew you could do it. Just issue notices and be consistent about it. Don't give up" (translation). Two weeks before Christmas, she had been given a school monitor to assist her.

[70] The complainant indicated that, after the 2010 Christmas break, everything had been running smoothly on her route. However, after the 2011 Easter break, there had been too many children boarding the bus without bus passes. She had told Mr. Breton that the next children who showed up without bus passes would not be allowed to board. According to the complainant, he had answered that that was fine. Mr. Breton had never told her not to leave a child on the sidewalk. She stated that she would never have done so otherwise. He had told her that she needed to be consistent, that it was okay. The complainant also indicated that Mr. Breton had never referred her to the code of ethics, and that she had never received the CSDM logbook and had never even seen the pocket version—she had seen it for the first time at the hearing of May 9, 2013.

[71] On cross-examination, the complainant acknowledged that it was her signature on an acknowledgement of receipt of the company's code of ethics for drivers. She acknowledged that she had read and understood it. Counsel for the employer also showed her rule XX of the code of ethics for drivers, which states, "Check each child's bus pass every day. Please advise the office if a child does not have his or her bus pass" and asked her why she had felt the need to ask the school whether the bus pass was mandatory. She did not answer the question.

[72] The complainant referred to the disciplinary notices she had issued between December 13, 2010, and March 22, 2011, in relation to missing bus passes. She stated that, on April 14, 2011, she had refused to allow a child to board the bus, and that the child had gone home to get his bus pass. At the end of the day, she had told Mr. Breton and had given him the disciplinary notice that she had completed in regard to the incident. The complainant stated that Mr. Breton had not given her any instructions other than to say, "That's fine. Just be consistent" (translation).

[73] In the rebuttal evidence, counsel for the employer sought Mr. Breton's reaction to the complainant's statement. Counsel for the complainant objected to the question. However, the Board dismissed the objection given that the issue was a fact put forth in the complainant's evidence, about which the witness could not have been questioned during the evidence-in-chief. Mr. Breton stated that he had never heard the complainant say that.

[74] The complainant indicated that, on May 27, 2011, she had refused to board the older brother of the child prevented from boarding on June 7, 2011, and that he had walked to school. At the end of the day, all the children had had their passes.

[75] With regard to the incident of June 7, 2011, the complainant indicated that the older brother of the child she had left on the sidewalk had got off the bus as soon as he had realized that his younger brother was not getting on. About 25 minutes had elapsed between that bus stop and the complainant's arrival at the school, when she had asked the administrative assistant to call the parents. She had been happy to hear that the children were with their mother. She had done her afternoon bus run as usual.

[76] The complainant had met with Mr. Breton at about 5:15 p.m. He had instructed her not to report for her bus run the next morning as he had received a complaint from the CSDM. She had given him a copy of the disciplinary notice issued that day, June 7, 2011. On June 8, 2011, she had met with Mr. Deschênes, Ms. Roy-Meilleur and Mr. Breton, and had given her account of the facts. She had confirmed that she had refused to board pupils in the past, in order to abide by the list of sanctions, and had indicated that it was important that she be strict and consistent.

[77] The incident on June 7, 2011, had been the first time that she had refused to allow the child in question to board, though she had issued him disciplinary notices in the past for a missing bus pass. She indicated that she had refused to allow children to board on four occasions out of the approximately 30 instances when she had issued disciplinary notices in respect of missing bus passes. She admitted that she had never been disciplined by the employer for allowing children without their bus passes to board the bus. When asked why she had not written "Not allowed to board" (translation) on the pertinent disciplinary notices, she answered that Mr. Breton had never told her to make such a notation. According to the complainant, she had been authorized to act as she had.

[78] The complainant received her dismissal letter on June 15, 2011, and filed her complaint of dismissal for union activity with the CRT on June 20, 2011.

2. Ms. Chantale Mercier, former employee of Idéal

[79] The complainant's second witness was Ms. Chantale Mercier, who had worked for the employer as a bus driver on Peter-Hall School routes from February 2009 to December 4, 2012, when she had resigned.

[80] In early April 2011, Ms. Mercier had been standing beside the complainant in the dispatch office when the latter had given Mr. Breton some disciplinary notices. The complainant had told Mr. Breton that she had warned the children that she would no longer allow them to board unless they had their bus passes. He had told her to be consistent.

[81] She testified regarding the meeting that had been held in a bus in early May 2011, at which Mr. Deschênes had spoken about the unionization. On cross-examination, she indicated that she was the president of the union executive for the Peter-Hall School bargaining unit and that was why she had been in the bus when Mr. Deschênes had met with the drivers in May 2011.

[82] However, in the rebuttal evidence, Mr. Deschênes, Mr. Breton and Ms. Trudeau all maintained that Ms. Mercier had not been invited or been present at that meeting. In any event, the Board is of the view that the testimony of Mr. Deschênes and the complainant is sufficient to establish what was said at that meeting.

IV. Positions of the Parties

A. The Employer's Position

[83] Given that the onus of proof is on the employer, counsel for the employer presented the employer's position first at the hearing. He referred to the principles formulated by the Board in relation to the interpretation of sections 94(3)(a), 97(1) and 98(4) of the *Code*, which the Board will discuss briefly hereafter.

[84] Counsel began by submitting that he had shown that there had been no anti-union animus behind the employer's decision to dismiss the complainant. She had committed a serious offence, in violation of the clear procedures of both the CSDM and the company, and had acted irresponsibly. The reasons for dismissal were clearly set out in the letter of dismissal of June 15, 2011. According to counsel, the employer had no choice but to remove the complainant from all

CSDM routes following Mr. Senécal's request of June 8, 2011. This was the first time that the employer had had this happen.

[85] The employer alleges that it did not interfere with the certification process between the filing of the application on April 17, 2011, and the issuing of the certification on May 11, 2011. Negotiations for the first collective agreement went smoothly, without the use of any pressure tactics. There is no evidence of anti-union animus on the part of the employer or evidence that it was informed of any union activity on the part of the complainant. Such a factor never entered into the equation, as the employer had not been aware that the complainant had played any role in relation to the union. Further, the complainant failed to prove that she had exercised union rights of any kind.

B. The Complainant's Position

[86] Counsel for the complainant also refers to Board decisions, respecting reverse onus of proof and the analysis that the Board must conduct of the evidence. Counsel argues that the employer has to come before the Board with more than "clean hands"—it must be "squeaky clean" (translation). He submits that the employer must prove, on a balance of probabilities, that its decision was not tainted by anti-union animus. He argues that the Board may look at all of the circumstances surrounding the dismissal and is not required to find direct evidence of anti-union animus. With regard to the complainant, the Board can draw inferences of anti-union motive based on events that took place coincident with the dismissal.

[87] Counsel for the complainant submits that he produced evidence of the complainant's union involvement and that the Board must analyze the different testimony and its credibility to determine its evidentiary weight. He indicates that Mr. Senécal of the CSDM was not aware of the problems with route no. 55 and did not even know how many disciplinary notices the complainant had issued between December 2010 and her suspension on June 8, 2011. He alleges that all of the employer's testimony seems to trivialize the number of infractions even though the complainant informed Mr. Breton each time she issued disciplinary notices.

[88] He argues that the Board cannot take account of the document that summarizes the complainant's file given that it was clearly prepared after the complaint had been filed and not

when the events occurred, as it mentions the payment dated August 1, 2011, for the last three days worked.

[89] Counsel for the complainant submits that the Board must give more weight to the complainant's testimony than to that of Mr. Breton in regard to the fact that she had advised him on at least four occasions that she had refused to allow children to board and he had not given her any specific instructions. The complainant maintains that she was following Mr. Breton's instructions. Counsel for the complainant alleges that the Board must assess the credibility and evidentiary weight of Mr. Breton's testimony, which was contradicted by the complainant and Ms. Mercier. With respect to the distribution of the CSDM logbook, Mr. Breton's testimony was contradicted by the complainant, who maintained that she had never been given a pocket version of the logbook.

[90] Counsel for the complainant submits that the employer treated the two cases subsequent to the complainant's case differently, offering the offenders other positions. According to counsel, that leaves only the union activity at the time of the certification as a motive for the complainant's dismissal, and the meeting with drivers in a bus in early May 2011 is proof of the anti-union animus.

V. Analysis and Decision

[91] The Board has decided to dismiss the complaint for the reasons set out below.

[92] Section 94(3)(a)(i) of the *Code* reads as follows:

94.(3) No employer or person acting on behalf of an employer shall

(a) refuse to employ or to continue to employ or suspend, transfer, lay off or otherwise discriminate against any person with respect to employment, pay or any other term or condition of employment or intimidate, threaten or otherwise discipline any person, because the person

(i) is or proposes to become, or seeks to induce any other person to become, a member, officer or representative of a trade union or participates in the promotion, formation or administration of a trade union.

[93] Section 98(4) of the *Code* provides that a complaint filed under section 94(3) is itself evidence of the violation:

98.(4) Where a complaint is made in writing pursuant to section 97 in respect of an alleged failure by an employer or any person acting on behalf of an employer to comply with subsection 94(3), the

written complaint is itself evidence that such failure actually occurred and, if any party to the complaint proceedings alleges that such failure did not occur, the burden of proof thereof is on that party.

[94] The onus of proof is thus reversed and it is up to the employer to prove that it did not violate section 94(3) of the *Code*.

[95] There is no need for the Board to analyze and review the many matters in which it has considered section 94(3) complaints and described reverse onus of proof. The Board will thus merely refer to a few of its decisions to ensure understanding of the general reasoning concerning the application and interpretation of sections 94(3) and 98(4) of the *Code*.

[96] With regard to reversed onus of proof, in *A.G. Transport Ltd.*, 2008 CIRB 406, the Board reiterated that the onus is on the employer to prove that the section 94(3) complaint is unfounded. In that matter, the Board allowed the complaint alleging that the employer had dismissed the complainant, who had been playing a key role as a union activist, in violation of section 94(3). The employer failed to show that the complainant's union activity had not influenced the decision to dismiss her. The Board stated the following regarding the onus of proof on the employer, which must demonstrate that its conduct was devoid of any anti-union animus:

[11] This provision of the *Code* was amended in 1978 to make it clear that there is no requirement for a complainant to make out a *prima facie* case, because the complaint in itself is considered to be evidence that the employer failed to comply with section 94(3) of the *Code*. In other words, section 98(4) of the *Code* creates a presumption, in favour of the complainant, that the employer's actions were tainted by anti-union animus. **Since the 1978 amendment, the mere making of a written complaint that an employer has failed to comply with any portion of section 94(3) of the *Code* is sufficient to reverse the onus and place the burden of proof on the employer to prove that the failure to comply did not occur.** The effect of the 1978 amendment was summarized in *Rapide Transport Inc.* (1986), 64 di 135 (CLRB no. 561):

This presumption, especially since the 1978 amendments to the *Code*, clearly has a two-fold effect: the filing of the complaint is itself evidence of failure to comply with the *Code* and the burden of proof of compliance is on the opposing party. In other words, were the employer, in the final analysis, not to offer any proof, the mere written complaint, made pursuant to the *Code* and the *Regulations*, is proof of failure to comply and the complaint would be upheld.

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[12] Thus, if the employer does not discharge its burden of proof, a complaint alleging contravention of section 94(3) of the *Code* will be upheld. In order to determine whether the employer has discharged its burden of proof, the Board will weigh all the evidence before it (see *Rigaud Transport Inc.* (1986), 68 di 89 (CLRB no. 605)). The employer must establish, through a preponderance of evidence, that its conduct was devoid of any anti-union animus (see *Cablevision du Nord de Québec Inc.* (1988), 73 di 173 (CLRB no. 681)).

[37] The Board does not agree that the test proposed by the employer is the correct test in cases of alleged failure to comply with section 94(3)(a)(i) of the *Code*. The test is not whether there is "no other reasonable explanation for the termination except union activities." Rather, to rebut the presumption imposed on it by section 98(4), an employer must prove, on a balance of probabilities, that its action was not tainted by anti-union animus. **A termination that might otherwise be justified can constitute a violation of section 94(3)(a)(i) of the *Code* if there is any hint that anti-union animus was involved in the decision to terminate.**

[38] In considering an employer's defence to a complaint made under section 94(3)(a)(i), the Board does not act as an adjudicator to decide whether or not the employer had just cause to dismiss an employee (see *Pierre Fiset* (1985), 55 di 233; and 85 CLLC 16,041 (CLRB no. 473)). The Board looks at all of the circumstances surrounding the dismissal, and is not required to find direct evidence of anti-union animus: the Board can draw inferences of anti-union motive based on events that took place coincident with the dismissal (*Emery Worldwide* (1990), 79 di 150 (CLRB no. 775)).

(emphasis added)

[97] According to the jurisprudence developed by the Board, the employer must prove, on a balance of probabilities, that its decision to take disciplinary action was not motivated by anti-union animus. The Board is not required to find direct evidence of the existence of anti-union animus and, in many instances, it has relied on circumstantial evidence, including the coincidence of union activities with the action that is the subject of the complaint (see *A.G. Transport Ltd.*, *supra*; and *Tousignant*, 2001 CIRB 119). The Board recently summarized the general principles in its jurisprudence in this regard in *Conseil des Innus de Pessamit*, 2011 CIRB 565:

[65] It is important to remember that each complaint must be assessed in light of its own facts and circumstances. In complaints alleging anti-union animus, the Board generally examines the employer's conduct in light of the circumstantial evidence, including any coincidence between the time of union activities and the decision or actions that are the subject of the complaint. Regardless of whether an employer has just cause to dismiss an employee, the employer is guilty of an unfair labour practice if there is evidence of anti-union animus.

[66] Under section 98(4) of the *Code*, the burden is on the employer to refute, on a balance of probabilities, the allegations giving rise to the complaint, namely that it was aware of the complainant's union activities and that those activities were a factor in its decision to terminate his employment.

[98] In that matter, the Board had before it a section 94(3) complaint filed by the union on behalf of four Pessamit public safety police officers, in which it alleged that the employer had terminated the four complainants' employment as a result of an application for certification that had been filed. The Board dismissed the complaint as it found nothing in the evidence to lead it

to conclude that the employer had been motivated by anti-union animus when it had made its final decision to terminate the complainants' employment.

[99] In *Rousseau*, 2007 CIRB 393, a majority of the Board also dismissed a complaint alleging violation of section 94(3) of the *Code* because the employer had discharged its burden of proof. A majority of the Board found that the complainant's dismissal had in no way been related to union activities and that the employer's decision had accordingly not been motivated by anti-union animus. In fact, while the complainant may have discussed unionization with his co-workers, he had not been serious. Further, the evidence failed to show that the employer had been aware of the complainant's intentions with regard to unionizing or of any union activity in which the complainant may have been involved:

[112] Although the complainant may have discussed unionization with his co-workers between November 2005 and April 2006, there is no indication that this was serious. In fact, the complainant stated that his comments had been made "jokingly." There is no basis for concluding that Mr. Rousseau's co-workers took things so seriously that CN's management could have noticed or become aware of what was going on. Neither Mr. Rousseau nor his co-workers specified the dates on which the discussion occurred or even said that the complainant intended to follow up on them, so as to allow the Board to find that the employer was aware of the complainant's union activities.

[113] Although the complainant may have had personal intentions with regard to unionizing his co-workers and may have consulted external resources for that purpose, there is no evidence to establish that the employer was aware of such intentions when it decided to terminate his employment.

[100] When the Board has before it a complaint alleging violation of section 94(3) of the *Code*, it is not the role of the Board to decide whether the employer had good reason to dismiss the complainant. Nor is it the Board's role to act as a grievance arbitrator. In *Transport Papineau Inc.* (1990), 83 di 185 (CLRB no. 842), the Canada Labour Relations Board (CLRB) explained the Board's role as follows:

When examining the merits of a complaint of unfair labour practice, the Board must be satisfied that the employer has not taken actions to limit or impede the legitimate exercise by employees of the rights conferred by the *Code*. The employer's actions must not be motivated by anti-union animus, but must be for cause. **This does not mean, however, that it is up to the Board to determine whether the reasons given by the employer to justify the action are valid, fair and commensurate with the seriousness of the alleged offence. The Board has no authority to determine whether the penalty imposed is commensurate with the alleged offence (see *Services Ménagers Roy Ltée* (1981), 43 di 212 (CLRB no. 308); and *Pierre Fiset* (1985), 55 di 233; and 85 CLC 16,041 (CLRB no. 473)).**

The Board, however, can examine the nature of the cause alleged by the employer, not to assess its fairness or determine its validity having regard to the context in which it is alleged, but to determine

whether it has the appearance of a pretext. This approach enables the Board to satisfy itself that this is indeed the real reason for the penalty and not an excuse or a pretext that masks anti-union animus.

(page 190; emphasis added)

[101] In the instant matter, the Board must verify, based on the evidence as a whole, whether the reasons for the complainant's dismissal set out in the employer's letter of June 15, 2011, are the actual reasons or merely pretexts to mask anti-union animus. To that end, the Board must determine whether the employer discharged its burden to establish that the complainant's dismissal was not tainted by anti-union animus.

[102] The Board conducted a detailed review of the evidence adduced at the hearing. Additionally, at the start of the hearing, the parties agreed on some of the evidence regarding the incident of June 7, 2011, and the number of disciplinary notices issued by the complainant to pupils on route no. 55.

[103] On June 7, 2011, the complainant refused to allow a pupil to board the school bus because he did not have his bus pass. The pupil in question and his brother went home, but their parents were not there. A neighbour contacted their parents to let them know that the children were alone on the balcony of their home.

[104] The school principal contacted Mr. Senécal to report the incident.

[105] Mr. Senécal stated at the hearing that the complainant's conduct had been in violation of the CSDM logbook and the transportation contract between the CSDM and Idéal.

[106] The evidence as to whether the complainant had received a copy of the logbook is contradictory. In early December 2010, the CSDM provided the employer with pocket versions of the logbook, which were allegedly distributed to each of the drivers. However, the complainant maintains that she never saw the said logbook. She did not sign any kind of acknowledgement of receipt of that document. Mr. Breton stated that he had given the complainant a copy of the logbook in early December 2010. The complainant may never have received it, or the logbook may have been placed in her bus, as she was transferred to the CSDM route on December 3, 2010.

[107] In any event, whether or not the complainant received the logbook is irrelevant in determining whether the employer's decision to dismiss the complainant was motivated by anti-union animus. As indicated farther on, the dismissal letter refers not to the logbook but, rather, to Idéal's code of ethics. It is clear from the evidence that the complainant twice signed an acknowledgement of receipt of the code of ethics, on August 24, 2010, when she started driving on the Peter-Hall School route, and on December 3, 2010, when she was assigned to CSDM route no. 55.

[108] The CSDM transportation contract stipulates that only the CSDM has the authority to make decisions about someone's transportation (clause 19) and that the CSDM may "require THE TRANSPORTATION COMPANY to remove a driver from all contact with pupils being transported if an internal investigation reveals that the driver is guilty of a serious offence that caused harm to a pupil or adversely affected the pupil's safety" (clause 21.1).

[109] The CSDM considered that the complainant's action had adversely affected the child's safety and Mr. Senécal called Mr. Breton that very same day to report what had allegedly happened and ask him to relieve the complainant of her duties. On June 8, 2011, he sent a letter to Idéal's president, Mr. Deschênes, referring to what the complainant had allegedly done and indicating that it was considered a serious offence. He demanded that the complainant be permanently removed from all CSDM routes.

[110] The complainant was called to a meeting with the employer's representatives, Mr. Breton, Mr. Deschênes and Ms. Roy-Meilleur, on June 8, 2011. At that meeting, the complainant explained that she had refused to allow the pupil to board on the basis of the list of sanctions that had been submitted to the employee committee. That list included a one-day suspension for allowing a child without a bus pass to board the bus. However, the evidence established that the list of sanctions had never been implemented.

[111] Ms. Trudeau and Mr. Breton met with the complainant on June 15, 2011, in order to dismiss her. In the letter of dismissal of June 15, 2011, the employer referred in particular to Idéal's code of ethics and the clauses thereof that the complainant had allegedly violated by refusing to transport a child whom she had previously always allowed on the bus. All of the

employer's witnesses were of the view that the complainant had jeopardized the child's safety and committed a serious offence.

[112] Counsel for the complainant brought up two other instances where the employer had treated the offenders differently, allegedly offering them other positions rather than dismissing them. One of those employees had even held a union position. The uncontradicted oral evidence of Mr. Senécal, Ms. Trudeau and Mr. Breton in this regard shows that the circumstances in those cases were not the same as those involving the complainant. In one case, the employee dropped the child off at the wrong stop. The child's mother was at the next stop and quickly met up with her child. Ms. Trudeau indicated that it was possible that the child had slipped out among the other children. In addition, she indicated that the employee in question had been driving for 14 years and had a clean track record. In the other case, the driver in question was assigned to transportation for Hydro-Québec and was involved in a harassment incident. According to Mr. Deschênes, to his knowledge, the incident involving the complainant had been the first time that a driver had deliberately refused to allow a child to board because of a missing bus pass.

[113] Counsel for the complainant stressed the statements made by Mr. Deschênes at the meetings in May 2011, during the unionization period. In his testimony, Mr. Deschênes acknowledged that he should not have said what he had said. Although his statements could have been the subject of a union complaint of unfair labour practice, the union did not file a complaint in that regard.

[114] Additionally, the evidence shows that, after the certification involving the bargaining unit represented by the CSN, the employer entered into negotiations with the new union and signed a collective agreement, without any pressure tactics on the part of the employees.

[115] In regard to the complainant, the evidence indicates that she did not play any role in the unionization process other than acting as a scrutineer for the election of the union executive. At the hearing, the employer's representatives stated that they had not been aware or been informed of any action by the complainant as a union representative. None of the employer's witnesses was aware of any involvement in union activity on the part of the complainant. On cross-examination, the complainant admitted that she had not had anyone sign union membership cards and that she had not applied for or been elected to a position on the union executive.

[116] The Board finds that, based on the evidence as a whole, the statements made by Mr. Deschênes in May were in no way connected to the complainant's dismissal.

[117] The Board notes that, even if what Mr. Breton said or failed to say gave the complainant the impression that she could refuse to allow children to board the bus if they did not have their bus passes, the Board cannot find that the decision to dismiss the complainant was tainted by anti-union animus on that basis.

[118] As indicated previously, it is not the Board's role to determine whether the employer's reasons for dismissing the complainant are fair or commensurate with the seriousness of the alleged offence (see *Transport Papineau, supra*). The Board cannot analyze the decision from a progressive discipline angle.

[119] In the Board's view, there is nothing in the evidence to indicate an anti-union motive that might be a cause for dismissal or even a proximate cause for dismissal as set out in the Board's jurisprudence.

[120] The Board is of the view that the employer discharged its onus and succeeded in showing that the decision to dismiss the complainant was not tainted by anti-union animus.

[121] Upon careful analysis of the evidence, the Board does not find that anti-union animus was behind the employer's decision to dismiss the complainant on June 15, 2011.

[122] For the above reasons, this complaint is dismissed.

[123] This is a unanimous decision of the Board.

Translation

Claude Roy
Vice-Chairperson

Daniel Charbonneau
Member

Robert Monette
Member